IN THE HIGH COURT OF JUDICATURE AT BOMBAY

A.S.

Writ Petition No.5825 of 2005

Smt Jayshree Janardhan Patil...Petitioner

vs

Shri Hasha Ambo Dalvi ....Respondent

Mrs V.S.Mhaispurkar for petitioner

Mr.C.H.Pursnani and A.K.Kadam for respondent

CORAM: S.U.KAMDAR J.

Dated 30.ll.2005

P.C:

l. By the present petition the impugned order passed on application for amendment of the prayer clause of the plaint has been challenged. The learned trial court while rejecting the application for amendment has come to the conclusion that the amendment application should not be granted in view of the fact that it has been filed at a belated stage. The learned counsel for the respondent has contended that the order passed by the appeal court is valid and justified because the suit is already decreed and the appeal therefrom is pending before the appeal court and at that stage prayer ought not to be granted. Present proceedings arise out of a suit filed by the plaintiff being suit no. 7l0 of l996. The suit is instituted prior to the amendment of 2002. The legal position as existing prior to the amendment is that the amendment can be

granted at any stage including at the appellate stage. In that view of the matter, the order passed by the trial court is unsustainable in law and there is total infirmity. In that light of the matter order dated 8.8.2005 is quashed and set aside. The application for amendment being Exh 22 is granted. The petitioner is directed to amend the plaint in terms of para 3 of the application Exh 22 dated 24.6.2005. The appeal court is directed to proceed with the matter after the amendment is carried out in the said pending suit. The learned counsel for the petitioner states that the petitioner will not seek any relief of applying for fresh oral evidence pursuant to the amendment permitted by this order.

. Petition is disposed of accordingly with no order as to costs.